

Notice of Allowability

Application No.

10/817,329

Examiner

Tuan D. Nguyen

Applicant(s)

SAXTON ET AL.

Art Unit

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10/10/2007.
2. ☒ The allowed claim(s) is/are 1-28, 30-51, 55-66, and 71-75 and renumbered as 1-67.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material

5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Office Action

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Bryan Hanks on 12/03/2007.

2. The application has been amended as follows:

In the claims:

Cancel claims 52-54

(End of Examiner's Amendment)

Examiner's Statement of Reason for Allowance

3. Claims 1-28, 30-51, 55-66, and 71-75 are allowed. The restriction requirement species, as set forth in the Office action mailed on 03/19/2007, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The restriction requirement is hereby withdrawn as to any claim that requires all the limitations of an allowable claim.**

In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim(s) presented in a continuation or divisional application include all the limitations of a claim that is allowable in the present application, such claims may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

4. The following is an examiner's statement of reasons for allowance: The prior art of record teaches various hearing devices thereon, for example US patent application publication 2004/0215053. However, the prior art of record fails to show claim 1, a self-expanding hearing device comprising: a body; a membrane adapted to contact a wall of an ear canal coupled said body being positioned at

least partially within said membrane and, a frame adapted to deploy from a compressed state to a deployed state when warmed above a material activation temperature of said frame, said frame being adapted to cause said membrane to move as said frame deploys; claim 55, a self-expanding hearing device comprising: a body; and, a frame coupled to said body, said frame being adapted to deploy from a compressed state to a deployed state when warmed above a material activation temperature of said frame, said frame being adapted, in the deployed state, to cause said self-expanding hearing device to at least partially seal to a wall of an ear canal; claim 71, a self-expanding hearing device comprising: a hearing aid body comprising: a microphone; a speaker; a frame coupled to the body, the frame being adapted to deploy from a compressed state to a deployed state when warmed above a material activation temperature of the frame, the frame being adapted, in the deployed state, to cause the self-expanding hearing device to at least partially conform to an ear canal; claim 74, a self-expanding hearing device comprising: a hearing aid body comprising: a microphone; a speaker; a Nitinol frame, the Nitinol frame being adapted to deploy from a compressed state to a deployed state when warmed by an ear canal; a silicone surface adapted to expand when the Nitinol frame deploys, the silicone surface being adapted to contact a wall of the ear canal and claim 75, a self-expanding hearing device comprising: a hearing aid body comprising: a microphone; a speaker; a Nitinol frame coupled to the body, the Nitinol frame being adapted to deploy from a compressed state to a deployed state when

warmed by an ear canal, the Nitinol frame comprising material activation temperature between 20°C and 40°C, the Nitinol frame being adapted, as the Nitinol fame deploys, to cause the self-expanding hearing device to expand in a user's ear canal.

5. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan D. Nguyen whose telephone number is (571) 272-8163. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curt Kuntz can be reached on (571) 272-7499. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

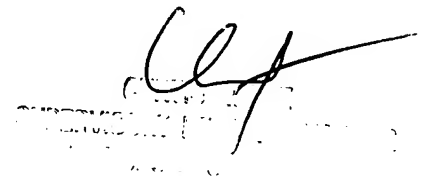
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TDN

12/4/07

A handwritten signature, possibly "C. J.", is written over a rectangular stamp. The stamp contains some text that is mostly illegible due to the signature and the quality of the scan.